NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES

CAROLYN BARNES, and Children, Plaintiff-Appellant

v.

UNITED STATES OF AMERICA; U.S. CENSUS BUREAU; FEDERAL BUREAU OF INVESTIGATION; U.S. DEPARTMENT OF COMMERCE; U.S. DEPARTMENT OF JUSTICE; ET AL., Defendants-Appellees

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ON PETITION FOR WRIT OF CERTIORARIA TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
CASE NO. 19-50925
On Appeal from the
United States District Court
For the Western District of Texas
No. 1:18-CV-952
Earl Leroy Yeakel, III

PETITION FOR WRIT OF CERTIORARI

Carolyn Barnes, *et al*,
Appellant
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QUESTIONS PRESENTED

Whether it violates due process to ignore a Motion to Recuse and apply the wrong standard of review.

Whether the extended preemptive "review" or "screening" process and summary disposal of claims is a delegated authority within the Constitution, or "required" by statute, or authorized by law; or whether it is merely a judicial subterfuge to discriminate against a targeted group of litigants or class of claims in violation of the United States Constitution and laws of this Republic?

Whether juridical bills of pains and penalties imposed in an *ex post facto* manner without due process may be utilized under our Constitution to retaliate against and punish a person who has done nothing more than exercise a fundamental right?

PARTIES TO THE PROCEEDING

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. CAROLYN BARNES and her children represented by CAROLYN BARNES, J.D., Ph.D., 419 Indian Trail, Leander, Texas 78641, email to barnes.legalguidance@gmail.com.

2. Defendant, THE UNITED STATES OF AMERICA, John F. Bash, the U.S. Attorney for the Western District, 601 NW Loop 410, Suite 600, San Antonio, Texas 78216; William Barr, Office of the Attorney General, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001; Administrative Office of the United States Courts, Office of the General Counsel, 1 Columbus Circle, Ste. 7-290, Northeast, Washington D.C. 20544.

3. Defendant, U.S. CENSUS BUREAU, (hereinafter referred to as "CENSUS"), U.S. Census Bureau, 4600 Silver Hill Road, Suitland, MD 20746.

4. Defendant, U.S. DEPARTMENT OF COMMERCE, (hereinafter referred to as "COMMERCE"), U.S. Department of Commerce, 1401 Constitution Ave., NW, Washington, D.C. 20230; Peggy Gustafson, Inspector General, 14th and Constitution Avenue, N.W., HCHB 7898-C, Washington, D.C. 20230.

5. Defendant, the FEDERAL BUREAU OF INVESTIGATION, (hereinafter referred to as "FBI"), FBI Headquarters, 935 Pennsylvania Avenue, NW, Washington, D.C. 20535-001.

6. Defendant, U.S. DEPARTMENT OF JUSTICE, (hereinafter referred to as "DOJ"), William Barr, Office of the Attorney General, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001; Michael E. Horowitz, Inspector General, 950 Pennsylvania Avenue, N.W., Suite 4760, Washington, D.C. 20530.

7. Defendant, U.S. ATTORNEYS OFFICE, (hereinafter referred to as "U.S. ATTORNEYS"), John F. Bash, the U.S. Attorney for the Western District, 601 NW Loop 410, Suite 600, San Antonio, Texas 78216; Executive Office for the U.S. Attorneys, U.S. Department of Justice, 950 Pennsylvania Avenue, NW, Room 2242, Washington, DC 20530-0001.

8. Defendant, UNITED STATES COURT SYSTEM, U.S. DISTRICT COURT FOR THE WESTERN DISTRICT-AUSTIN DIVISION, 5TH CIRCUIT COURT OF APPEALS, and U.S. MARSHALS, (hereinafter referred to as the "ENTERPRISE"), United States Senate Committee on the Judiciary, 224 Dirksen Senate Office Building, Washington, D.C. 20510-6050; Administrative Office of the United States Courts, Office of the General Counsel, 1 Columbus Circle, Ste. 7-290, Northeast, Washington D.C. 20544.

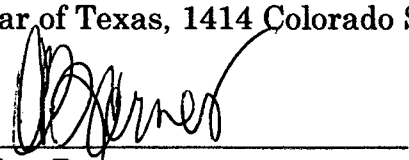
9. Defendant, TRAVIS COUNTY, TRAVIS COUNTY SHERIFF'S DEPARTMENT, TRAVIS COUNTY PRETRIAL SERVICES, and TRAVIS COUNTY ATTORNEYS OFFICE, (hereinafter referred to collectively as the "CABAL"), Travis County Attorney's Office, 314 11th St W, Austin, TX 78701; Travis County Judge Sarah Eckhardt, Travis County Commissioner's Court, 700 Lavaca, Suite 2.300, Austin, TX 78701; Travis County Probation Office, Blackwell-Thurman Criminal Justice Center, 509 W. 11th St., Room 2.900, Austin, TX 78701.

10. Defendant, WILLIAMSON COUNTY, WILLIAMSON COUNTY SHERIFF'S DEPARTMENT, WILLIAMSON COUNTY ATTORNEYS OFFICE, WILLIAMSON COUNTY DISTRICT ATTORNEYS OFFICE, and WILLIAMSON COUNTY PROBATION DEPARTMENT, (hereinafter referred to collectively as the "CARTEL"), Sheriff Robert Chody, (successor to Boutwell, Richards, Maspero, Elliot, Wilson, and Wilson), Williamson County Sheriff's Department, 508 Rock Street, Georgetown, Texas 78626; Dan A. Gattis, (successor to John Doerfler and currently on suspension for official oppression), County Judge, Williamson County Commissioner's Court, 710 S. Main Street, Ste. 101, Georgetown, TX 78626; Shawn Dick, (successor to a legacy of corruption in Ed Walsh, Mike Davis, Ken Anderson, John Bradley, Robert McCabe, and Jana Duty), Williamson County District Attorney's Office, Williamson County Justice Center, 405 M.L.K. Street, Suite 265, Georgetown, TX 78626; DEE HOBBS, (partner-in-crime with DALE RYE and MELISSA HIGHTOWER, and successor to Jana Duty and Eugene Taylor) Williamson County Attorney's Office, Williamson County Justice Center, 405 M.L.K., Suite 229, Georgetown, Texas 78626.

11. Defendant, HAMILTON COUNTY, HAMILTON COUNTY SHERIFF'S DEPARTMENT, HAMILTON COUNTY DISTRICT ATTORNEYS OFFICE, B.J. SHEPPARD, KEITH WOODLEY, JUDSON WOODLEY, and GEORGE

PHILIP ROBERTSON, (hereinafter referred to collectively as the "MKS" for "MISOGYNOUS KLAN SYNDICATE"), PHIL ROBERTSON, 110 S. Main, Meridian, Texas 76665; B.J. SHEPHERD, 15460 E. FM 219, Hico, Texas 76457; KEITH and JUDSON WOODLEY, 306 N. Austin Street, Comanche, Texas 76442, 707 Center Avenue, Brownwood, Texas 76801; HAMILTON COUNTY SHERIFF'S DEPARTMENT, 1108 S. Rice, Hamilton, Texas 76531.

12. Defendant, STATE OF TEXAS, DEPARTMENT OF STATE HEALTH SERVICES, TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION, ADULT PROTECTIVE SERVICES, NORTH TEXAS STATE HOSPITAL; TEXAS ATTORNEY GENERAL, THIRD COURT OF APPEALS, SIXTH COURT OF APPEALS, TENTH COURT OF APPEALS, SUPREME COURT OF TEXAS, TEXAS COURT OF CRIMINAL APPEALS, STATE BAR OF TEXAS OCDC, CFLD, and BODA (hereinafter referred to as "TEXAS" collectively), Secretary of State, Rolando B. Pablos, Capitol Building, 1100 Congress, Room 1E-8, Austin, Texas 78701, James E. Rudder Building, 1019 Brazos, 4th Floor, Austin, Texas 78701; Texas Attorney General Ken Paxton, Agency #: 302209 West 14th St., P.O. Box 12548, Austin, Texas 78711-2548; Chief Justice, Nathan L. Hecht, Supreme Court of Texas, Supreme Court Building, 201 W. 14th Street, Room 104, Austin, Texas 78701; Chief Justice, Jeff Rose, Third Court of Appeals, Price Daniel Sr. Building, 209 West 14th Street, Room 101, Austin, Texas 78701; Chief Justice, Sharon Keller, Court of Criminal Appeals, Supreme Court Building, 201 West 14th Street, Room 106, Austin, Texas 78701; Chief Justice, Josh R. Morriss, III, Sixth Court of Appeals, 100 N. State Line Avenue, Ste. 20, Texarkana, Texas 75501; Chief Justice, Tom Gray, Tenth Court of Appeals, 501 Washington Avenue, Rm. 415, Waco, Texas 76701; John William Hellerstedt, MD, Commissioner Texas Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3199; TDMHMR, Central Office, Office of Consumer Services & Rights Protection, P.O. Box 12668, Austin, Texas 78711-2668; Director of Adult Protective Services, State Office, Mail Code E-561, P.O. Box 149030, Austin, TX 78714-9030; Chief Disciplinary Counsel, State Bar of Texas OCDC, 1414 Colorado Street, Austin, Texas 78701; Executive Director of BODA, Christine E. McKeeman, P.O. Box 12426, Austin, Texas 78711; CFLD, State Bar of Texas, 1414 Colorado Street, Austin, Texas 78701



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PETITION FOR WRIT OF CERTIORARI

Congress owes a fiduciary duty to protect the right to petition for the redress of grievances and ensure fairness within the inferior courts it creates so that reasonable expectations are not frustrated.[1] Congress cannot abdicate or re-delegate its fiduciary responsibility to attorneys within a partnership in official lawlessness,[2] (hereinafter referred to as "partnership"). If partnership attorneys are allowed to willfully conflate two statutes[3] and expand another to usurp the power of Congress to regain sovereign control and nullify unalienable rights,[4] then Congress abdicated its fiduciary duty to those who were the least trusted by the founders of this constitutional republic.

OPINIONS BELOW

Judgment and Order entered on September 17, 2019.[5] ROA.915-918.

Fifth Circuit *per curiam* panel AFFIRMED on its Summary Calendar on April 9, 2020.[6]

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[1] U.S. CONST. Art III, § 1, and Art. I, § 8.

[2] Justice Brennan said that judicial integrity meant judges should "avoid the taint of partnership in official lawlessness." *United States v. Calandra*, 414 U.S. 338, 357 (1974) (Brennan, J, dissenting)). Justice Brennan argued that procedural rules are designed to achieve the goal of "enabling the judiciary to avoid the taint of partnership in official lawlessness and of assuring the people—all potential victims of unlawful government conduct—that the government would not profit from its lawless behavior, thus minimizing the risk of seriously undermining popular trust in government." Courts cannot "affirm by judicial decision a manifest neglect, if not an open defiance of the prohibitions of the Constitution, intended for the protection of the people against such unauthorized action." *Weeks v. United States*, 232 U.S. 383, 391-392 394 (1914). The phrase was also used by Justice Ginsburg. *See Herring v. United States*, 129 S.Ct. 695, 705 (2009) (quoting *United States v. Calandra*, 414 U.S. 338, 357 (1974) (Brennan, J., dissenting)).

[3] *Informa pauperis* statute (*IFP*) with Prison Litigation Reform Act (PLRA)(Appendix B-2).

[4] Federal Magistrates Act (FMA) appears in Appendix B-3.

[5] Appendix A-1.

Fifth Circuit *per curiam* panel DENIED the Petition for Rehearing En Banc without opinion or *en banc* consideration on June 22, 2020.[7]

This Petition was filed within 90 days.

JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1), and pursuant to Art. III, §2 (1); Art. IV, § 2, para. 1; Art. IV, § 4; and Art. VI, para. 2 and 3 of the United States Constitution. Petitioner challenges the constitutionality of conflating the *in forma pauperis* statute (*IFP*) and the Prison Litigation Reform Act (PLRA)[8] to nullify Congressional intent and impair rights protected by the Constitution. The PLRA bill of attainder is misapplied to negate *IFP* protections, which allows attorneys to conceal crimes and cover-up predatory practices and authoritarian abuses by robbing the people of their fundamental right to petition. In every tribunal, Petitioner's motion to recuse and constitutional challenges were ignored, and the facts were deemed irrelevant. Jurisdiction exists due to the systemic fraud, institutional negation of legal capacity, and authoritarian nullification of rights. These issues are "of tremendous national importance" because rights are reduced to licenses and people cannot be fairly heard on their petitions for want of a valid license or a fair forum. Application of the bill of attainder and imposition of the cruel and unusual bill of pains and penalties are unconstitutional *per se*.

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[6] Appendix A-2.
[7] Appendix A-3.
[8] IFP and PLRA appear in Appendix B-2.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Appendix B reproduces the federal constitutional and statutory law, 28 U.S.C. § 1915 and 28 U.S.C. § 1915A, 28 U.S.C. § 631, *et seq.*, Fed. R. Proc. Rule 1, 3, 4, 8, and the Standing Order of the District Courts; and Appendix C reproduces the pertinent parts of the Texas Constitution, including the bill of rights, which is integral and foundational to the Texas Constitution.

STATEMENT OF THE CASE

1. On October 11, 2018, Petitioner filed a *sworn* application to proceed *IFP*. ROA.586-590. Petitioner also filed a *sworn* Motion to Recuse. ROA.591-607. Subject to the motion to recuse and without waiving same, Petitioner filed a *sworn* Original Complaint. ROA.12-585. *See* especially ROA.51, ROA.502, ROA.607, and ROA.584. The complaint set out 11 claims.[9] Petitioner set out the reason for the recusal; and demonstrated that the law was clearly established,[10] proved the plausibility of the claims, demonstrated that damages were sustained, and requested a jury trial.[11]

2. Access to the court was obstructed and the case was abated indefinitely without explanation or due process. The clerks refused to file, docket, and assign a case number or issue summons. The clerk refused to respond to

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[9] First, ROA.178-230; Second, RICO ROA.230-309; Third, §§ 1983, 1985 ROA.309-369; Fourth, ADA ROA.370-381; Fifth, RFRA ROA.381-386; Sixth, Breaches of fiduciary duty, contract, oath, and Fraud ROA.386-.437; Seventh, ROA.437-443; Eighth, Stolen Claims under the Texas Constitution and Laws and Fifth Amendment takings ROA.443-454; Ninth, Continuing Conspiracy and Specific Performance ROA.454-460; Tenth, Declaratory Judgment and Prospective Injunctive Relief ROA.460-485; Eleventh, Attorney's fees and costs ROA.485-487.

[10] *See also* ROA.504-553.

[11] ROA.476-477; ROA.487-488; Docket sheet ROA.10.

requests concerning status of *IFP* application, (ROA.626), and refused to set a hearing on the motion to recuse.

3. Magistrates have no authority to enter indefinite injunctions under the Federal Magistrates Act[12] ("FMA") or violate a local standing order[13] and ignore § 1915 (d).

4. For over nine months, "[t]he officers of the court" refused to "issue and serve all process, and perform all duties" equal to official performance in non-*IFP* cases.[14] "[T]he same remedies" were not "available as provided for by law in other cases."

5. The magistrate, Mark Lane (hereinafter referred to as "ML"), and the Judge, Earl Leroy Yeakel, III (hereinafter referred to as "ELY") both ignored the sworn motion to recuse. The case never advanced into a traditional adversarial posture. *See also* § 1915 (e) (1).

6. On July 30, 2019, ML issued R&R without any semblance of due process, hearing, or opportunity to be heard. ROA.789-796.

7. ML opined that he was "required" to conduct a "review" under 28 U.S.C. §1915A.[15]

8. ML's Order granting *IFP* continued the *sua sponte* injunction in place and recommended a dismissal of the claims *with prejudice* and imposition of civil death penalty to ban Barnes from the courts for life.

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[12] 28 U.S.C. § 631, *et seq.* Appendix B-3.
[13] *See* Appendix B-5.
[14] *See* Fed. R. Civ. Proc. Rule 4 (a)-(c) (Appendix B-4).
[15] 28 U.S.C. § 1915A is part of the political agenda resulting in the PLRA, which attorneys layer over the *IFP* to nullify rights and achieve a desired political result. Appendix B-2.

9. By forcing the claims through the oppressive screening sieve of § 1915A, the court circumvented a mandatory hearing on the motion to recuse and thwarted efforts to obtain a neutral and detached decision-maker.

10. On August 23, 2019, Appellant filed *sworn* Objections, which were never controverted, disputed, or contested. ROA.799-912.

11. On September 17, 2019, ELY signed the Order and entered final judgment. ROA.915-918.

12. The mechanical nullification order accepted and adopted the mere *ipse dixit* of ML and ignored all of Petitioner's sworn pleadings and objections.

13. In retaliation for seeking redress of grievances, Barnes was outlawed even though she met none of the criteria set out in § 1915 (g).

14. Petitioner was enjoined from filing anything other than a notice of appeal, which blocked her from filing a motion for leave to amend, motion to reconsider, or motion for new trial as "in other cases."

15. On October 1, 2019, *sworn* Notice of Appeal was filed. ROA.975-996.

16. On October 7, 2019, *sworn* Amended Notice of Appeal was filed. ROA.919-972.

17. On Appeal, Petitioner and her claims were summarily disposed under the fraudulent claim that Petitioner was raising the constitutional challenges for the first time on appeal. Even though Petitioner requested *en banc* reconsideration, the same panel blocked relief.

REASONS TO GRANT REVIEW

1. This case involves questions of exceptional importance concerning fundamental rights and the constitutionality of a statute on its face and as applied in violation of the First,[16] Fourth,[17] Fifth,[18] Seventh,[19] Eighth,[20] Ninth,[21] and Tenth[22] Amendments, the prohibition against bills of attainder, and the proper standard of review.

2. Congressional "intent to encourage compliance with the law does not establish that a statute is merely the legitimate regulation of conduct."[23] There is "unmistakable evidence of punitive intent" in § 1915A, § 1915 (g), and the "vexatious" branding of outlawry.[24]

3. It is unconstitutional *per se* for partnership attorneys to withhold, impair, interfere with, or suspend unalienable rights by distortion of statutes and undermine the legal capacity of citizens as part of a subterfuge to justify the obstruction of access, exclusion from courts,

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[16] U.S. Const. amend. I. Appendix B-1.
[17] U.S. Const. amend. IV addresses "misuse of power." *Byars v. United States*, 273 U.S. 28, 273 U.S. 33 (1927). Appendix B-1.
[18] U.S. Const. amend. V. Appendix B-1.
[19] U.S. Const. amend. VII. Appendix B-1.
[20] U.S. Const. amend. VIII. Appendix B-1.
[21] U.S. Const. amend. IX guarantees that the federal courts will not deny, disparage, or nullify the "forever inviolate" rights retained under Tex. Const. Art. I, §§ 1-29. Appendix B-1.
[22] U.S. Const. amend. X reserves all rights not specifically delegated to the federal government. Appendix B-1.
[23] *Selective Serv. Sys. V. Minn. Pub. Interest Research Grp.*, 468 U.S. 841, 851 (1984). *See also United States v. Brown*, 381 U.S. 437, 458 (1965). Bills of attainder are often "enacted for preventive purposes—that is, the legislature made a judgment, undoubtedly based largely on past acts and associations...that a given person or group was likely to cause trouble...and therefore inflicted deprivations upon that person or group in order to keep it from bringing about the feared event." *Id.* at 458-59.
[24] *ACORN*, 618 F.3d at 141 (quoting *Selective Serv. Sys. v. Minn. Pub. Interest Research Grp.*, 468 U.S. 841, 856 n.15 (1984)) (internal quotation marks omitted).

suspension of the rule of law, nullification of rights, disposition of claims, and infliction of multiple, retaliatory punishments. It is the ultimate betrayal by one's own country when juridical evil is allowed to triumph over truth and fairness.

> We the people are the rightful masters of both Congress and the courts, not to overthrow the Constitution but to overthrow the men who pervert the Constitution.
>
> —Abraham Lincoln

ARGUMENT

Courts are bound by *jus cogens* norms and obligations *erga omnes*,[25] which are peremptory norms from which no derogation is permitted. The Constitution protects *jus cogen* rights to meaningful access to the courts to

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[25] Any restriction on access to the courts violates due process and basic values "implicit in the concept of ordered liberty." *Palko v. Connecticut*, 302 U.S. 319, 325 (1937). Processes that rely upon judicial self-restraint will inevitably fail because this is a standardless process that invites abusive discrimination and suppression of rights. The Ninth and Tenth Amendments are not meaningless or irrelevant surplusage in the bill of rights. *Marbury v. Madison*, 1 Cranch 137, 174 (1803). In interpreting the Constitution, "real effect should be given to all the words it uses." *Myers v. United States*, 272 U.S. 52, 151 (1926). The Ninth and Tenth Amendments recognize and protect the rights set forth in Article I of the Texas Constitution. Since these rights existed at the time of the annexation of the Republic of Texas, then, as a matter of contract, they are protected by the 1st, 4th, 5th, 9th, and 10th Amendments the same as if they were set forth in the federal bill of rights. No exclusion from the courts was allowed when the "forever inviolate" rights were established and the self-executing Texas Bill of Rights was adopted. Yet, no one would have questioned the fundamental right of the people to vindicate the violation of their rights without a pay-to-play scheme. Since the rights enumerated in the Texas Bill of Rights were not ever delegated, attorneys cannot abrogate or violate those rights under any circumstance. Partnership attorneys have no authority to limit, ration, restrict, or revoke rights. *Griswold v. Connecticut*, 381 U.S. 479, 484-86 (1965); *United Public Workers v. Mitchell*, 330 U.S. 75, 94-95 (1947); *Ashwander v. TVA*, 297 U.S. 288, 300-11 (1936); *Tennessee Electric Power Co., v. TVA*, 306 U.S. 118, 143-44 (1939); *Calder v. Bull*, 3 U.S. (20 Wall.) 386, 388 (1789) (Chase, J.); *Loan Ass'n v. Topeka*, 87 U.S. (20 Wall.) 655, 662-63 (1875) (Miller, J.); *Richmond Newspapers v. Virginia*, 448 U.S. 555, 579-80 & n. 15 (1980) (Burger, J. plurality op.); *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Martin v. Struthers*, 319 U.S. 141, 143 (1943); *Wieman v. Updegraff*, 344 U.S. 183, 195 (1952); *NAACP v. Alabama*, 357 U.S. 449, 462 (1958); *De Jong v. Oregon*, 299 U.S. 353 (1937); *Board of Education v. Barnette*, 319 U.S. 624 (1943); J. Ely, Democracy and Distrust—A Theory of Judicial Review (Cambridge: 1980), 34-41; C. Black, Decision According to Law (New York: 1981); The Rights Retained by the People: The History and Meaning of the Ninth Amendment (Randy E. Barnett, ed., 1989).

petition for the redress of grievances and be heard in a fair and impartial tribunal.[26] Imposition of cruel, unusual, excessive, and disproportionate punishment is prohibited by the Fourth, Fifth, and Eighth Amendments. The right to be free from punishment imposed in a retroactive, *ex post facto* manner with bills of pains and penalties or bills of attainder is prohibited by U.S. Const., Art. 1, § 9, Cl. 3. Pursuant to the protections afforded by the Ninth and Tenth Amendments, the "forever inviolate" rights of the Texas Constitution entitles the women of Texas to open courts, jury trial, the due course of law, equal rights, protection from cruelty, and freedom from outlawry.[27] This republic owes a fiduciary duty to fulfill its *erga omnes* obligations.

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[26] The courts must "assure the indigent an adequate opportunity to present his claims fairly." *Ross v. Moffitt,* 417 U.S. 600, 616 (1974). "[M]eaningful access," to the courts is the touchstone. *See id.* at 417 U. S. 611, 612, 615. The Supreme Court has stated that "the cost of protecting a constitutional right cannot justify its total denial." *Bounds v. Smith,* 430 U.S. 817, 825, 828 (1977); *Bonner v. City of Prichard,* 661 F.2d 1206, 1212 (11th Cir. 1981); *Cruz v. Hauck,* 475 F.2d 475, 476 (5th Cir. 1973). *Id.* at 1130. Although the right is particularly crucial to prisoners, the right is fundamental to all persons, whether incarcerated or free. Classifications impinging on the right must be closely related to the promotion of a compelling state interest. *See Wolff v. McDonnell,* 418 U.S. 539, 555, 579 (1974); *Johnson v. Avery,* 393 U.S. 483, 485 (1969); *Fay v. Noia,* 372 U.S. 391, 402 (1963); see also *Brown v. Allen,* 344 U.S. 443, 502 (1953) (Frankfurter, J., concurring); *Griffith v. Wainwright,* 772 F.2d 822, 825 (11th Cir. 1985); *Merritt v. Faulkner,* 697 F.2d 761, 763 (7th Cir.) cert. denied, 464 U.S. 986 (1983) ("when rights of a constitutional dimension are at stake, a poor person's access to the federal courts must not be turned into an exercise in futility"); *United States ex rel. Marcial v. Fay,* 247 F.2d 662, 669 (2d Cir. 1957)(en banc) cert. denied, 355 U.S. 915 (1958) "([w]e must not play fast and loose with basic constitutional rights in the interest of administrative efficiency"). *See Wolff,* 418 U.S. at 579; *Cruz v. Beto,* 405 U.S. 319, 321 (1972); *Johnson v. Anderson,* 370 F. Supp. 1373, 1383 (D. Del. 1974).

[27] The Constitutions have preempted the field when it comes to rights retained by and reserved to the people. No federal statute or rule existed when the 9th and 10th amendments were ratified. Courts cannot take vague and indeterminate language in a subsequent act of Congress and apply it in an overly broad manner to nullify the Texas Bill of Rights, or suspend statutory and common law, or restrict claims through a misinterpretation or misapplication of the statute. Since the Court must interpret statutes under the presumption that Congress intended compliance with Constitutional mandates, federal statutes and rules

> Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation, and consequently the theory of every such government must be, that an act of the legislature, repugnant to the constitution, is void.
>
> —*Marbury v. Madison,* 5 U.S. (1 Cranch) 137, 177 (1803).

Whether it violates due process to ignore a Motion to Recuse and apply the wrong standard of review.

1. Due Process entitles all litigants to objective impartiality from the judiciary. [28] Petitioner was entitled to a fair-minded judge with the unquestioned appearance of fairness.[29]

2. Courts possess no discretion to ignore a sworn motion that was filed pursuant to 28 U.S.C. §§ 144 and 245.[30] Parties cannot be forced to forfeit all rights and endure the indignities of a biased or hostile court, but may condition the presentment of claims on the constitutional prerequisite of a fair forum.[31] Under 28 U.S.C. § 144, abstention and referral are mandatory

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must be read in the historical context of the 9th and 10th amendments and the Texas Constitution, as well as the exiting framework of the due course of law.

[28] Petitioner "must be granted an opportunity to present [her] claims to a court unburdened by any "possible temptation . . . not to hold the balance nice, clear and true between the State and the accused," *Tumey* v. *Ohio,* 273 U. S. 510 (1927). *See* 28 U.S.C.A. § 455 (2016); 28 U.S.C.A. § 144 (2016); and MODEL CODE OF JUDICIAL CONDUCT Canon 3(C) (AM. BAR ASS'N 2011). *See* RICHARD E. FLAMM, JUDICIAL DISQUALIFICATION: RECUSAL AND DISQUALIFICATION OF JUDGES § 1.4 at 9 (2d ed. 2007) (detailing expansions of grounds for recusal under federal statute and discussing their significance); *see also* Charles Geyh, Myles Lynk, Robert S. Peck & Hon. Toni Clark, The State of Recusal Reform, 18 N.Y.U. J. LEGIS. & PUB. POL'Y 515, 517 (2015). *Cf.* CHARLES GARDNER GEYH, FED. JUDICIAL CTR., JUDICIAL DISQUALIFICATION: AN ANALYSIS OF FEDERAL LAW 12–13 (2d ed. 2010) (discussing the so-called duty to sit as it relates to judges' obligations to recuse themselves).

[29] *Caperton v. A.T. Massey Coal Company, Inc.*, 129 S. Ct. 2252 (2009) ("The failure to consider objective standards requiring recusal is not consistent with the imperatives of due process" when there is a "serious risk of actual bias based on objective and reasonable perceptions.").

[30] *See* ROA.591-607.

[31] *See* ROA.51. Paragraph IV on page 40 of the original complaint.

because the words "shall proceed no further" removes all discretion.[32] With this safeguard, Congress provided protection from the cognitive priming, cognitive bias, confirmation bias, cognitive dissonance, and other prejudicial proclivities or abuses of authority by men who occupy positions of power. ML and ELY were not neutral and detached.[33] Pre-existing conditions lessened the likelihood that these men would be sensitive to the institutional interests that compel the courts to maintain the appearance of impropriety.[34] The motion should have been referred to a neutral and detached arbiter.[35] Madison spoke precisely to the point:

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[32] "Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, *such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.*" 28 U.S.C. § 144.

[33] *See Windsor v. McVeigh*, 93 U.S. 274 (1876); *In re Murchison,* 349 U. S. 133, 136 (1955) ('[O]ur system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome.'); *Spencer* v. *Lapsley,* 20 How. 264, 266 (1858) (recognizing statute accords with this maxim); see also Publius Syrus, Moral Sayings 51 (D. Lyman transl. 1856) ('No one should be judge in his own cause.'); B. Pascal, Thoughts, Letters and Opuscules 182 (O. Wight transl. 1859) ('It is not permitted to the most equitable of men to be a judge in his own cause.'); 1 W. Blackstone, Commentaries *91; *Martinez v. Lamagno*, 515 U.S. 417, 428-29 (1995).

[34] The Guide to Judiciary Policy provides numerous advisory opinions addressing judicial conduct *in an effort to avoid even the slightest perception of bias or impropriety. See* Federal Judicial Center, Judicial Disqualification: An Analysis of Federal Law (2d. ed.) at pp. 26-37. *See* 28 U.S.C. § 144. A judge shall disqualify himself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which: (a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding. *See* 28 U.S.C. § 455 (a), (b) (1). The Code is self-executing. *See also, Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868 (2009); *Tumey v. Ohio*, 273 U.S. 510 (1927).

[35] An unconstitutional failure to recuse constitutes structural error that is "not amenable" to harmless-error review. *Williams v. Pennsylvania*, 136 S. Ct. 1899, 1905 (2016) ("[b]ias is easy to attribute to others and difficult to discern in oneself."); *Puckett* v. *United States*, 556 U. S. 129 (2009). See, e.g., Dmitry Bam, Recusal Failure, 18 N.Y.U. J. LEGIS. & PUB. POL'Y 631, 644, available at http://www.nyujlpp.org/wp-content/uploads/2015/11/Bam-Recusal-Failure-18nyujlpp631.pdf. See Charles Gardner Geyh, Why Judicial Disqualification Matters. Again., 30 REV. OF LIT. 671, 677-8 (2011) (identifying recusal rule in ancient Roman law); RICHARD E. FLAMM, JUDICIAL DISQUALIFICATION: RECUSAL AND

> "No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men are unfit to be both judges and parties at the same time . . . ." The Federalist No. 10, p. 79 (C. Rossiter ed. 1961).

In *Lamagno,*[36] this Court stated:

> If Congress made the [judge's] delegate sole judge, despite the apparent conflict of interest, then Congress correspondingly assigned to the federal court only rubber-stamp work. Upon [reviewing the financial status] in a case such as this one, the [IFP would be granted, but the case] would automatically [be recommended for dismissal] ...and, just as automatically, the [motion to recuse would be mooted and the] case would be dismissed. The key question presented—[facts supporting the claims]—however contestable in fact, would receive no judicial audience. The court could do no more, and no less, than convert the [magistrate's] scarcely disinterested decision into a court judgment. This strange course becomes all the more surreal when one adds to the scene the absence of an obligation on the part of the [judge's] delegate to conduct a fair proceeding, indeed, any proceeding. [He] need not give the plaintiff an opportunity to speak to the [factual question], or even notice that [he] is considering the question. Nor need [he] give any explanation for [his] action....instructing a court automatically to enter a judgment pursuant to a decision the court has no authority to evaluate [or ability to review]. Cf. *United States* v. *Klein,* 80 U.S. 13 Wall. 128, 146 (1872) (Congress may not "prescribe rules of decision to the Judicial Department of the government in cases pending before it"). We resist ascribing to

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DISQUALIFICATION OF JUDGES § 1.2, at 5 (2d ed. 2007); and Brief for Brennan Center for Justice at NYU School of Law and Justice at Stake as Amici Curiae Supporting Petitioner, *Williams v. Pennsylvania*, 136 S. Ct. 1899 (2016) No. 15-5040, 2015 WL 8138320; and *see also* Brief of the American Bar Association as Amicus Curiae in Support of Petitioners, Caperton v. A.T. Massey Coal Co., 556 U.S. 868, (2009) (No. 08-22), 2009 WL 45978; Press Release, Justice at Stake, Poll: Huge Majority Wants Firewall Between Judges, Election Backers, Justice at Stake (Feb. 22, 2009), http://www.justiceatstake.org/newsroom/press_releases.cfm/poll_huge_majority_wants_firewall_between_judges_election_backers?show=news&newsID=5677. *See also* Menendez, Matthew and Samuels, Dorothy, Judicial Recusal Reform: Toward Independent Consideration of Disqualification, Brennan Center for Justice at NYU School of Law, https://www.brennancenter.org/sites/default/files/2019-08/Report_Judicial_Recusal_Reform.pdf.

[36] *Martinez v. Lamagno*, 515 U.S. 417, 434 (1995).

> Congress an intention to place courts in this untenable position." *Id.*

Factual findings must be based on evidence and reduced to writing. Written decisions are particularly important in the context of recusal.[37] An incomplete record is misleading because without a full development of the facts, courts lack the evidence necessary for a reasoned decision. ELY and ML circumvented the motion and deprived Petitioner of an evidentiary hearing to sanitize the record.[38] This abuse frustrates Congressional intent to protect the *IFP* and renders this Court impotent and incapable of fulfilling its fiduciary duty to protect human rights.[39] In the absence of any evidence, ELY merely concludes that the motion to recuse was "solely for the purpose of delay...frivolous...without merit." ELY is duplicitous to accuse Petitioner of filing a motion "solely for the purpose of delay" when the process the court

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[37] Transparent, reasoned, written decisions—or at the very least, decisions with reasons committed to record—preserve judicial legitimacy, by requiring officials to give public reasons for their actions. They also encourage judges to fully engage with the reasons offered in support of the recusal request and facilitate the creation of precedent. See SAMPLE, POZEN & YOUNG, at 32; see also Amanda Frost, Keeping Up Appearances: A Process-Oriented Approach to Judicial Recusal, 53 U. KAN. L. REV. 531, 561-62 (2005). Written, transparent disposition of recusal methods increase public confidence in the judiciary. ABA Resol. 105C (2014). *See* Debra Lyn Bassett, Three Reasons Why, (reviewing studies of bias and arguing that independent review of recusal motions can mitigate unconscious bias). Requiring written findings of fact to support recusal decisions are in accord with the ABA's 2014 Resolution 105(C), which calls upon courts to adopt recusal procedures that "are transparent." "Nor should a litigant or counsel have to guess at the process by which a decision on a motion to disqualify is considered. Transparency is both an end itself and a means by which fairness and efficiency is promoted. It assures that reviewable reasons are expressed on the recusal decision." JUDICIAL DIV., ABA, REPORT ON RESOLUTION 105C, at 3 (2014), available at http://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/resolutions/2014_hod_annual_me eting_105c.authcheckdam.pdf.

[38] ELY met the criteria in subparagraphs (a) and (b) (1) of 28 U.S.C. § 455. These juridical attorneys have a personal stake in concealing the corruption in Williamson County, and a clear motive to engage in self-vindication of their prior politically-motivated conduct of aiding and abetting.

[39] *See Gutierrez de Martinez* v. *DEA*, 111 F.3d 1148, 1155 (4th Cir. 1997); *Jamison* v. *Wiley*, 14 F.3d 222 (4th Cir. 1994).

designed allows an injunction for an indefinite term without any semblance of due process *solely to cause delay* and create the mere appearance of justice. The hearing on the motion would have caused far less delay than the nine months the magistrate took to determine the *IFP*.[40]

3. No objective person would have any confidence in the "determination" of the claims and imposition of punishment. An arbiter of the law who takes on an accusatorial and adversarial role loses neutrality and detachment.[41] Any objective person knowing all the facts and history of these claims might reasonably question or harbor reasonable doubts as to the objectivity and impartiality of ELY, and conclude that his and ML's continued participation creates an unconstitutional probability or risk of bias too high to be constitutionally tolerable.[42]

4. On appeal, the same prejudicial animosity prevents a fair and impartial *de novo* review. The Panel failed to apply the proper standard of

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[40] When people enter the courts seeking relief, unreasonable delays and indefinite injunctions deprive them of irretrievable rights causing irreparable harm. The ministerial duty to determine financial status should not take more than nine months to perform.

[41] When a tribunal performs an act of consequence that Congress has not authorized, reversal on appeal is the appropriate course. *See Rivera v. Illinois*, 556 U.S. 148, 161 (2009); *Nguyen v. United States*, 539 U.S. 69 (2003). The statutory provision in question "embodies a strong policy concerning the proper administration of judicial business." *Id.* at 78 (citing *Glidden Co. v. Zdanok*, 370 U.S. 530, 536 (1962)). *See* also, *Wingo v. Wedding*, 418 U.S. 461 (1974).

[42] *Rippo v. Baker*, 580 US _, 137 S.Ct. 905 (2017) ("Recusal is required when, objectively speaking, 'the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.'" *Caperton v. A. T. Massey Coal Co.*, 556 U. S. 868 (2009). A constitutionally intolerable probability of bias exists when the same person serves as both accuser and adjudicator in a case. *See In re Murchison*, 349 U. S. 133 –137 (1955). A multimember court must not have its guarantee of neutrality undermined, for the appearance of bias demeans the reputation and integrity not just of one jurist, but of the larger institution of which he is a part. *Williams v. Pennsylvania*, 136 S. Ct. 1899, 579 U.S. __ (2016).

review because 28 U.S.C. § 1915A is applied to an identifiable group to deny them equal access to the courts and rights protected by the First Amendment. "Abuse of discretion" is the wrong standard of review when attorneys have *no discretion* to violate protected rights with discriminatory impact.[43] Abuses that trespass upon rights, usurp legislative and executive duties, and fall outside lawful parameters, are not exercises of discretion. Courts use indeterminate terms, such as "great deference," "broad discretion," and "presumption" of legality to whitewash systemic discrimination. Pure questions of law concerning authority under the Constitutions, FMA, determination of "constitutional fact," and dismissals with prejudice are reviewed *de novo*.[44] When attorneys abuse the courts, violate the separation of powers, deny equal access to courts, deprive the people of due process, ignore the prohibition against bills of attainder, and impose *sua sponte* or *suo motu* punishment for life with permanent disfranchisement and irreversible nullification of rights under juridical bills

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43 *Thompson v. Whitman*, 85 U.S. 457 (1873) ("no government, if it desires extraterritorial recognition of its acts, can violate those rights which are universally esteemed fundamental and essential to society." *Id.* at 469); *Vallely v. Northern Fire & Marine Ins. Co.*, 254 U.S. 348, 41 S.Ct. 116 (1920) (citing *Elliott v. Lessee of Piersol*, 1 Pet. 328, 26 U.S. 328 (1828) ("Courts are constituted by authority, and they cannot go beyond the power delegated to them. If they act beyond that authority, and certainly in contravention of it, their judgments and orders are regarded as nullities. They are not voidable, but simply void, and this even prior to reversal." *Id.* at 353-54); and *Old Wayne Mut. Life Ass'n v. McDonough*, 204 U.S. 8 (1907)).

44 *Coalition for the Abolition of Marijuana v. City of Atlanta*, 219 F.3d 1301, 1316 (11th Cir. 2000); *Horton v. Reliance Standard Life Ins. Co.*, 141 F.3d 1038, 1040 (11th Cir. 1998); *Biggs v. Meadows*, 66 F.3d 56, 59 (4th Cir. 1995). "A matter requiring statutory interpretation is a question of law requiring *de novo* review." *United States v. Brown*, 639 F.3d 735, 737 (6th Cir. 2011) (quoting *United States v. Batti*, 631 F.3d 371, 375 (6th Cir. 2011)). *See Johnson v. State*, --- So. 3d ---, 2012 WL 16692 at *5 (Fla. Jan. 5, 2012) ("pure questions of law subject to *de novo* review").

of pains and penalties, the review is *de novo with strict scrutiny*. In assessing the constitutionality of a statute, or a systemic juridical practice nullifying human rights by conflating and misinterpreting or misapplying vague, indeterminate, and standardless terms, or an institutionalized pattern of juridical acts mechanically imposing punishment with a "vexatious" litigant label, which permanently infringes upon First Amendment rights, impairs the right to petition, and punishes religious, economic, and other expressive freedoms, the proper standard of review is *de novo* with "strict scrutiny"[45] and the policy and practice "must be viewed in the light of less drastic means for achieving the same basic purpose."[46]

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[45] *Skinner v. Oklahoma*, 316 U.S. 535, 541, (1942). Review of misinterpretation and misapplication of a statute to frustrate or repeal its intent is *de novo*. *Bazrowx v. Scott*, 136 F.2d 1053 (5th Cir. 1998)(dismissal is "viewed with disfavor" and is reviewed *de novo*—citing *Lowrey v. Texas A & M Univ. Sys.*, 117 F.3d 242, 246-47 (5th Cir.1997) (citation and internal quotation omitted)). A summary judgment is reviewed *de novo*. *McFaul v. Valenzuela*, 684 F.3d 564, 571(5th Cir. 2012).

[46] *Shelton v. Tucker*, 364 U.S. 479, 488 (1960); *Bates v. Little Rock*, 361 U.S. 516, 524 (1960). *See also McLaughlin v. Florida*, 379 U.S. 184 (1964); *Zemel v. Rusk*, 381 U.S. 1, 503-504 (1965).

Whether the extended preemptive "review" or "screening" process and summary disposal of claims is a delegated authority within the Constitution, or "required" by statute, or authorized by law; or whether it is merely a judicial subterfuge to discriminate against a targeted group of litigants or class of claims in violation of the United States Constitution and laws of this Republic?

1. *IFP* is the codification of a common law right.[47] No authority was delegated to the republic to obstruct access to the courts. Neither Congress nor the Courts are free to design a substitute barrier to achieve the same result and preemptively bar entrance with discriminatory impact.[48] If it is not delegated in the Constitution, it cannot be taken by judicial expansion. Absent authority, there can be no exercise of discretion.[49] The right to access the courts is not a license, franchise, or privilege; does not require payment or gatekeeper permission; and cannot be blocked or entry punished.

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[47] The Magna Carta first recognized the concept that indigents should not be barred from seeking justice. The Magna Carter states: "To no one will we sell, to no one will we deny or delay right or justice." MAGNA CARTA § 40, quoted in Catz & Guyer, 31 RUTGERS L. REV. at 656 (quoting J.C. Holt trans. 1965); Catz & Guyer, 31 RUTGERS L. REV. at 656 (citing 11 Hen. 7, ch. 12 (1494)). *See Neitzke v. Williams*, 490 U.S. 319, 324 (1989) ("The federal *in forma pauperis* statute, enacted in 1892 and presently codified as 28 U.S.C. § 1915, is designed to ensure that indigent litigants have meaningful access to the federal courts. *Adkins* v. *E. I. DuPont de Nemours Co.*, 335 U.S. 331, 342-343 (1948)."); *Coppedge* v. *United States*, 369 U.S. 438, 447 (1962); *see also* H.R. Rep. No. 1079, 52d Cong., 1st Sess., 1 (1892)."). "Congress justifiably enacted § 1915 to allow indigent persons access to the courts so that their rights may be vindicated." *Cay v. Estelle*, 789 F.2d 318, 324 (5th Cir. 1986).

[48] The imposition of financial barriers restricting access to courts has no place in our heritage of Equal Justice Under Law. *Burns v. Ohio*, 360 U.S. 252, 257-258 (1959).

[49] *See Ex Parte Young*, 209 U.S. 1234, 159-60 (1908). When a federal officer acts outside his lawfully delegated authority, by intentionally violating a *jus cogens* norm, the conduct falls outside lawfully delegated authority. *Cf. Nasuti v. Scannell*, 906 F.2d 802, 807 n.10 (1st Cir. 1990) (quoting and citing H.R. Rep. No. 100-700 at 5, reprinted in 1988 U.S.C.C.A.N. 5945, 5949).

2. Judges are bound by oath to protect the people and their rights *equally, whether rich or poor,* and to faithfully and *impartially* discharge and perform all duties incumbent upon them *under the Constitution and laws of the United States.* Wealth or poverty should play no role or influence in determining who is allowed access. Determinations of wealth or poverty should not be used as a pretense to dispose of claims or as an artifice to repeal or restrict unfavorable claims or causes of action.[50] A fair and impartial tribunal is one that hears before it condemns, and ensures that claims are heard on the merits. No federal statute or rule can work a constitutional injury to a citizen without due process.[51] The partnership cannot remove the traditional avenue to petition by deeming claims frivolous.

3. By lobbying for the PLRA with skewed, histrionic, and inflammatory anecdotal reports, attorneys pushed through their own form of "tort reform" with a nullification of civil rights unburdened by the national conscience.[52]

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[50] *"The liberties of none are safe unless the liberties of all are protected."* - William O. Douglas

[51] U.S. Const. amends. I, IV, V, VII, VIII, IX, and X; Tex. Const. Art. I, §§ 3, 3a, 8, 9, 10, 11, 12, 13, 14, 15,15a, 16, 19, 20, 23, 25, 26, 27, 28, and 29. *See also* Universal Declaration of Human Rights, G.A. Res. 217A, at art. 8, U.N. GAOR, 3d sess., 1st plen. mtg., U.N. Doc. A/810 (Dec. 12, 1948) ("Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the [C]onstitution or by law."); International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), at art. 2, U.N. Doc. A/6316 (Dec. 16, 1966); International Convention on the Elimination of All Forms of Discrimination, G.A. Res. 2106, at art. 6, U.N. Doc. A/6014 (Dec. 12, 1965) ("State Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions...."); American Convention on Human Rights art. *25(1),* July 18, 1978, 1144 U.N.T.S. 128 ("Everyone has the right to simple and prompt recourse ... to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation[s] may have been committed by persons acting in the course of their official duties.").

[52] People are "entitled" by the Creator to certain fundamental and inalienable rights and they agreed to form a government that "shall" provide protection for these human rights.

During the PLRA amendments, § 1915 was rendered vague, indeterminate, and confusing because it invites the conflation of two conflicting statutory intentions—the protective intent to allow equal access for paupers with the punitive and restrictive intent to screen prisoner litigation.[53] Improper conflation of two conflicting intents with indeterminate terms negates the stated intent of *IFP* and allows attorneys to suspend and nullify unalienable rights. This unintended, unconstitutional, discriminatory, and disfranchising result renders the Supremacy Clause meaningless.[54]

4. When the literal application of a statute will produce a result that is demonstrably at odds with the intentions of the drafters, the intent controls.[55] As Judge Learned Hand explained, "statutes should be construed with some imagination of the purposes which lie behind them." *LeHigh Valley Coal Co. v. Yensavage*, 218 F. 547, 552 (2d Cir. 1914). The "purpose

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Fisher v. United States, 402 F.3d 1167, 1173 (Fed. Cir. 2005) (*en banc*); *United States v. White Mountain Apache Tribe*, 537 U.S. 465, 473 (2003).

[53] *Cantwell v. Connecticut*, 310 U.S. 296, 308 (1940); *Musser v. Utah*, 333 U.S. 95, 97 (1948). "The vagueness may be from uncertainty in regard to persons within the scope of the act . . . or in regard to the applicable tests to ascertain guilt." Id. at 97; *Winters v. New York*, 333 U.S. 507, 515–16 (1948). A statute may be so vague or so threatening to constitutionally protected activity that it can be pronounced wholly unconstitutional; or "unconstitutional on its face." *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972); *Smith v. Goguen*, 415 U.S. 566 (1974). A vague statute that regulates in the area of First Amendment guarantees will be pronounced wholly void. *Winters v. New York*, 333 U.S. 507, 509–10 (1948); *Thornhill v. Alabama*, 310 U.S. 88 (1940). In *FCC v. Fox*, 567 U.S. ___, No. 10–1293, slip op. (2012) 613 F. 3d 317 (first case) and 404 Fed. Appx. 530 (second case), vacated and remanded, *E.g., United States v. National Dairy Corp.*, 372 U.S. 29 (1963). Where the terms of a statute could be applied both to innocent or protected conduct (such as free speech or petitioning) and unprotected conduct, but the valuable effects of the law outweigh its potential general harm when abused, such a statute will be held unconstitutional as applied. *Palmer v. City of Euclid*, 402 U.S. 544 (1971); *Village of Hoffman Estates v. The Flipside*, 455 U.S. 489, 494–95 (1982).

[54] U.S. CONST., Art. VI, cl. 2.

[55] *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 242 (1989). Repeals by implication are not favored by the courts. *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 442 (1987); *Posadas v. National City Bank*, 296 U.S. 497, 503 (1936).

surely was not to make the [magistrate] the final arbiter of [the claims]."[56] Courts must consider the overarching intent of the Constitutions and other statutes within the framework of the rule of law. By enacting 42 U.S.C. § 1983 in 1871, Congress intended "to give a remedy to parties deprived of constitutional rights, privileges and immunities by an official's abuse of his position." *Id.* at 172. "This act is remedial, and in aid of the preservation of human liberty and human rights....such statutes and constitutional provisions...are meant to protect and defend and give remedies for their wrongs to all the people." CONG. GLOBE, 42ND CONG., 1ST SESS. APP'X 68 (1871); *see also id.* at 217 (remarks of Sen. Thurman) ("there is no limitation whatsoever upon the terms that are employed, and they are as comprehensive as can be used"); CONG. GLOBE, 42ND CONG., 1ST SESS. 800 (remarks of Rep. Perry) ("we have asserted as fully as we can assert the mischief intended to be remedied."); *id.* at 476 (remarks of Rep. Dawes) (the person who "invades, trenches upon, or impairs one iota or tittle of the least of [constitutional rights], to that extent trenches upon the Constitution and laws of the United States, and this Constitution authorizes us to bring him before the courts to answer therefor"). Insulating willful interlopers with weaponized immunity defeats the purpose of the bill of rights. **"To what purpose are powers limited, and to what purpose is that limitation committed**

[56] *Martinez v. Lamagno*, 515 U.S. 417, 425 (1995).

to writing, if these limits may, at any time, be passed by those intended to be restrained?"[57]

5. Courts owe a duty to hear and determine a petition to vindicate the violation of rights, *see Davis v. Passman*, 442 U.S. 228 (1979); *Carlson v. Green*, 446 U.S. 14 (1980), and that duty "is not lightly to be set aside."[58] It rests with the judiciary to insure that *pro se* claims of constitutional significance are afforded an adequate hearing so that justice is done.[59] Abrogation of cognate rights on an *ad hoc* basis by screening cases pre-suit effectively suspends the law for the targeted group.[60] "[*H*]*abeas corpus* and civil rights actions are of 'fundamental importance . . . in our constitutional scheme' because they directly protect our most valued rights."[61] Courts must protect unfettered access to present claims against the government with the same criteria used for *habeas corpus*.[62] The preemptive policy and retaliatory ritual removes all effective means for ensuring "a reasonably adequate

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[57] *See, e.g., Mugler v. Kansas,* 123 U.S. 623, 661, 8 S. Ct. 273, 31 L. Ed. 205 (1887)(citing *Marbury v. Madison,* 5 U.S. 137, 176, 1 Cranch 137, 2 L. Ed. 60 (1803). *See also Owen v. City of Independence,* 445 U.S. 622, 651 (1980)

[58] *United States v. Fausto,* 484 U.S. 439, 455 (1988) (Blackman, J., concurring).

[59] Joseph M. McLaughlin, *An Extension of the Right of Access: The Pro Se Litigant's Right to Notification of the Requirements of the Summary Judgment Rule,* 55 Fordham L. Rev. 1109, 1128 (1987). *See Burris v. State Department of Public Welfare of S. C.*, 491 F.2d 762 (4 Cir. 1974), Canty *v. City of Richmond, Va., Police Dept.*, 383 F.Supp. 1396 (E.D.Va.1974), affirmed, 526 F.2d 587 (4 Cir. 1975), cert. denied, 423 U.S. 1062, 96 S.Ct. 802, 46 L.Ed.2d 654 (1976)." *Gordon v. Leeke*, 574 F.2d 1147 (4th Cir. 1978).

[60] *Neitzke v. Williams*, 490 U.S. 319, 330 (1989) ("Given Congress' goal of putting indigent plaintiffs on a similar footing with paying plaintiffs, petitioners' interpretation cannot reasonably be sustained. See *Haines* v. *Kerner*, 404 U.S. 519, 520 (1972)").

[61] *Bounds v. Smith*, 430 U.S. 817, 827 (1977); *Johnson v. Avery,* 393 U.S. 483, 485 (1969); *Wolff v. McDonnell,* 418 U.S. 539, 579 (1974) ("It is futile to contend that the Civil Rights Act of 1871 has less importance in our constitutional scheme than does the Great Writ.").

[62] *Ex parte Hull*, 312 U. S. 546, 549 (1941); *Johnson v. Avery,* 393 U. S. 483 (1969); *Wolff v. McDonnell,* 418 U. S. 539, 577- 580 (1974); *Ross v. Moffitt,* 417 U.S. 600, 616 (1974).

opportunity to present claimed violations of fundamental constitutional rights."[63]

6. The overly broad interpretation or disfranchising application of a vague and indeterminate statute violates the separation of powers because courts use the ministerial practice of assessing financial status to roll into oppression under a feigned pretense that they are "required" to conduct a "gatekeeper" merit-based review under 28 U.S.C. § 1915 (e) (2) (B) akin to § 1915A.[64] "Review" designed to curtail a perceived threat from those already under punishment of the law, is enlisted to fold a blanket of governmental protection around official oppressors to disfranchise the vast majority of Americans, which the very laws being suspended were intended to protect.[65] Intended beneficiaries are stripped of their reasonable expectations,[66] which is "a palpable invasion of rights secured by the fundamental law."[67] *Marbury*

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[63] *Bounds v. Smith,* 430 U.S. 817, 825 (1977). *See also Burns v. Ohio,* 360 U. S. 252, 360 U. S. 257 (1959); *Smith v. Bennett,* 365 U. S. 708 (1961); *Griffin v. Illinois,* 351 U. S. 12, 20 (1956).

[64] The courts attract and harbor men who are "disposed to usurp" and they have created "a plausible pretence for claiming that power." *See* The Federalist, No. 84 (Cooke ed. 1961) at 578-579 (A. Hamilton). The Ninth and Tenth Amendments were intended to curtail these usurpers of power. See Redlich, Are There "Certain Rights...Retained by the People"? 37 N.Y.U.L. Rev. 787 (1962); Kelsey, The Ninth Amendment of the Federal Constitution, 11 Ind. L. J. 309 (1936). Courts owe a fiduciary duty to push back against usurpers and interlopers.

[65] By shoving all "*pro se*" and paupers into the same category as prisoners, authoritarian oppressors can achieve the totalitarian control which the bill of rights has historically prevented.

[66] *The Charming Betsy,* 6 U.S. (2 Cranch) 64, 118 (1804) ("an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains"); *see also F. Hoffman-LaRoche Ltd. v. Empagran S.A.,* 542 U.S. 155, 166 (2004); *McCulloch v. Sociedad Nacional de Marineros de Honduras,* 372 U.S. 10, 21 (1963).

[67] *See Meyer v. Nebraska,* 262 U.S. 390, 400, 43 S. Ct. 625, 67 L. Ed. 1042 (1923); *Lawton v. Steele,* 152 U.S. 133, 137, 14 S. Ct. 499, 38 L. Ed. 385 (1894); *Missouri, Kan. & Tex. R. Co. v. Rockwall County Levee Improvement Dist. No. 3,* 117 Tex. 34, 297 S.W. 206, 212 (1927); *Houston & Tex. Cent. R.R. Co. v. City of Dallas,* 98 Tex. 396, 84 S.W. 648, 653-54 (1905); *City of Coleman v. Rhone,* 222 S.W.2d 646, 650 (Tex.Civ.App.-Eastland 1949, writ ref'd).

v. Madison, 5 U.S. (1 Cranch) 137 (1803). "The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws whenever he receives an injury." *Id.* at 162. The systemic nullification of that legal right is an injury-in-fact.[68] It is an abuse of process under 28 U.S.C. § 1915 (e) (2) (B) to require a pre-suit review of *all IFP* under 28 U.S.C. § 1915A. The improper conflation nullifies 28 U.S.C. § 1915(d), and renders § 1915A meaningless if pre-suit review is already required under §1915(e) (2) (B).[69] By conflating the "required review" under §1915A into every *IFP* motion, attorneys exploit the opportunity as a means to deprive the *bête noire* of due process.[70]

7. The adopted practice breaches the obligations *erga omnes* of this republic.[71] A repeal of *IFP suo motu* in such an arbitrary and capricious manner, before docketing the case, "would be a breach of faith no less 'cruel and astounding' than to abandon the [free people whom the Constitution] had promised to maintain in their freedom." *United States v. Klein*, 80 U.S. (13 Wall.) 128, 142 (1871). "It was urged in argument that the right to sue the government...is a matter of favor, but this seems not entirely accurate. It is

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[68] *See Allen* v. *Wright*, 468 U. S. 737, 751 (1984).

[69] Courts ignore the definition of "prisoner" in § 1915A (c). "*Pro se*" is a pejorative epithet used to imply untrustworthy, frivolous, and undesirable. Yet, for the Founding Fathers, this was the normal way a person entered courts—in one's own capacity, not through a paid escort.

[70] Attorneys do not allow a case to be docketed until they are prepared to dismiss it. With a secret objection that produces an automatic strike, attorneys punish undesirables and exclude claims they disfavor. *Neitzke v. Williams*, 490 U.S. 319, 320 (1989). "To conflate these standards would deny indigent plaintiffs the practical protections...which are not provided when complaints are dismissed *sua sponte*..."

[71] *Brower v. Inyo County*, 489 U.S. 593 (1989).

as much the duty of the government as of individuals to fulfill its obligations." *Id.*

8. Congress alone has the authority and duty to constitute and regulate the inferior courts to ensure and protect the general welfare of the people.[72] Article III courts cannot perform executive and legislative functions because that would violate the constitutional principle of *delegata potestas non potest delegari.*[73] Abdication, re-delegation, or confiscation of authority is a void act. Juridical attorneys trample upon the rights reserved by the people by encroaching upon the powers of Congress.[74] Article III tribunals cannot broaden legislation to usurp and comingle power, impair or nullify rights, and allow attorneys to seize upon vague terms to constrict, limit, or grab power from Congress and impair fundamental rights.[75]

9. Attorneys capitalize upon vague terms because the intent is to target a specific identifiable group. There is a special class that is protected and given special treatment and unfettered access to the courts (those paying the full price of admission and escorted by attorneys); and there is a clearly identifiable group that is excluded by placing an impossible burden on

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[72] U.S. Const. art. I, § 8.

[73] *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935); *Wayman v. Southard*, 23 U.S. (10 Wheaton) 1 (1825); *A.L.A. Schechter Poultry Corp.*, 295 U.S. 495 (1935); *Carter v. Carter Coal Co.*, 289 U.S. 238 (1936); *J.W. Hampton, Jr. & Co. v. United States*, 276 U.S. 394, 406, 48 S.Ct. 348, 351 (1928); *American Power & Light Co. v.* SEC, 329 U.S. 90, 329 U.S. 105 (1946); *Mistretta v. United States*, 488 U.S. 361 (1989)); John Locke, Second Treatise of Civil Government (1690).

[74] *United States v. Klein*, 80 U.S. 13 Wall. 128, 146 (1872)

[75] *Gordon v. United States*, 69 U.S. 2 Wall. 561 (1864); *Williams v. United States*, 289 U.S. 553, 555 (1933). *See* also *Ex parte Bakelite Corp'n,*, 279 U.S. 438, 49 S.Ct. 411, 414 (1929); *O'Donoghue v. United States*, 289 U.S. 516, 530 (1933); *Gordon v. United States*, 117 U. S. 697 (1865); *Re Sanborn*, 148 U. S. 222, 13 S. Ct. 577, 37 L. Ed. 429 (1893); *United States v. Klein*, 80 U.S. (13 Wall.) 128, 144-145, 20 L. Ed. 519 (1871).

them.[76] The abuse reflects a desire to discourage what privileged men regard as frivolous, meritless, or vexatious people and their menial claims.[77] Claims are presumed "frivolous," so they can be preempted and summarily dismissed. Bills of attainder invite invidious discrimination. In a veiled tactic to manufacture a pretext to dismiss, attorneys usurp and assume the legislative, accusatory, enforcement, and judiciary roles to target and exclude the undesirables. The ritual is inherently subjective and unfettered by the rule of law.[78] Those fitting within the targeted group are moved from "suspect" to "guilty and punished" all in one private session within a magistrate's imagination. The pretense of application of law camouflages oppression against those most in need of protection, while courts protect those who most abuse others.

10. Pre-suit dismissal has a chilling, exclusionary, discriminatory, and punitive effect when directed towards a marginalized group that is most likely to suffer the indignity of human rights violations and most in need of the right to petition. "Depriving someone of an arguable (though not yet established) claim inflicts actual injury because it deprives him of something

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[76] Attorneys purport to rely upon the presumed determination of guilt as justification for the preemptive dismissal and infliction of irreparable injury, but there is never a fair determination of guilt. Catz & Guyer, *Federal In Forma Pauperis Litigation: In Search of Judicial Standards*, 31 RUTGERS L. REV. 655, 657 (1978) (quoting H.R. REP. No. 1079, 52nd Cong., 1st Sess. (1892)).

[77] *United States v. Jackson,* 390 U. S. 570 (1968); *Desist v. United States,* 394 U. S. 244, 256 (1969); *North Carolina v. Pearce,* 395 U. S. 711, (1969); *Chaffin v. Stynchcombe*, 412 U.S. 17, 26-27 (1973).; *Colten v. Kentucky,* 407 U. S. 104 (1972).

[78] *City of Chicago v. Morales*, 527 U.S. 41 (1999); *Colten v. Kentucky*, 407 U.S. 104 (1972).

of value..."[79] and attorneys routinely rob the targeted group of arguable claims for reasons that are not even cogent.[80] A fair application of *IFP* does not "require" a pre-docketing "review" that goes beyond a determination of financial status. Raising the bar on what is required of a "*pro se*" *IFP* is not "consonant with Congress' goal in enacting the *IFP* of assuring equality of consideration for all litigants." *Neitzke*, 490 at 320. A fair court would implement a system where the ministerial duty of reviewing financial status would take a miniscule amount of time and then allow the case to proceed like any other case. *Monroe v. Pape*, 365 U.S. 167, 180 (1961).

11. *Neitzke*[81] is interpreted as judicial legislation authorizing the policy of discrimination through a tyranny of labels[82] where § 1915A is a bill of attainder[83] layered over the *IFP* and systematically applied to all prisoners, paupers, and "*pro se*." Conflation and labeling by the judiciary excludes and

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[79] *Lewis v. Casey*, 518 U.S. 343, 353 (1996).
[80] *Cofield v. Alabama Pub. Serv. Comm'n*, 936 F.2d 512, 515 (11th Cir. 1991).
[81] *Neitzke v. Williams*, 490 U.S. 319 (1989)
[82] *See* Barkett, J., "The Tyranny of Labels" 33 *Suffolk Univ. L. Rev.* 749 (2005).
[83] THE FEDERALIST NO. 44, at 278-79 (James Madison) (Clinton Rossiter ed., 2003) ("Bills of attainder...are contrary to the first principles of the social compact and to every principle of sound legislation...The sober people of America are weary of the fluctuating policy which has directed the public councils."). Prohibition against attainder protects unpopular individuals from government excess through a strict separation of powers. *See* Akhil Reed Amar, *Attainder and Amendment 2: Romer's Rightness*, 95 MICH. L. REV. 203, 210 (1996)) ("Without the nonattainder principle, the legislature could simply single out its enemies—or the politically unpopular—and condemn them for who they are, or for what they have done in the past and can no longer change."). This is exactly what the Courts have done—they have convinced Congress that a certain segment of the population is abusing the courts in order to obtain the ability to punish by attainder, rather than a jury trial with due process. *Ad hominem* attacks based on mere *ipse dixit*, mischaracterization of facts, distortion of pleadings, and malicious, self-serving speculation are used to demean members of the targeted group to dismiss their claims outside the protection of the Constitution and rule of law. They serve as juridical scapegoats and are hounded and driven from the courts, their voices suppressed and silenced, as they are forced to pay for the crimes of attorneys.

punishes by means having a maximum destructive impact.[84] The tyranny of labels is concealed behind an "abuse of discretion" review that proclaims the courts are "absolutely certain" that the *bête noire* "is unable to make any rational argument in law or fact to support [the] claim for relief" because the "facts" are just too incredible. *Neitzke*, 490 U.S. at 323.

12. The authority granted to magistrates "is to be construed narrowly." *U.S. v. Desfr*, 257 F.3d 1233, 1236(11th Cir. 2001). The language chosen by Congress assumes a "pending pretrial matter" or "motion" to be "heard and determined" and a referral for a fact-finding hearing. The magistrate is not free to *sua sponte* raise his own "matters" as an adversary might, and then "determine" them without a hearing or due process, or to block timely discovery[85] and presentment of claims in a meaningful manner.[86] The only matters pending before the court were an application to proceed *IFP* and a

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[84] *See* dissent by Justice Brennan *In re McDonald*, 489 U.S. 180, 186-87 (1989).

[85] *Pro se* allowed to conduct discovery in order to more adequately state his claim. *Murphy v. Kellar*, 950 F.2d 290 (5th Cir.1992).

[86] ML unreasonably obstructed and delayed the case in violation of § 1915 (d) and the Standing Order of the Court (Appendix B-5), and assumed the role of the judge, opposing counsel, and accuser operating with no transparency. Petitioner had no notice that ML was treating her like a prisoner. "A district judge may not designate a magistrate judge to hear and determine a motion to involuntarily dismiss an action." *Hunt v. Pliler*, 384 F.3d 1118, 1123 (9th Cir. 2004); *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991). A magistrate exceeds his authority when he is the one making these oral motions and requests for relief, and summarily granting them. The R&R was replete with vilification normally flowing from opposing counsel. When the vilification comes from a magistrate, as if he had conducted a true adversarial hearing and actually heard and determined pending motions with due process based upon evidence and testimony, then the judge must decide between two opponents—his magistrate and the *pro se* litigant. This posture violates due process and principles of fundamental fairness. ELY cannot be objective when ML is the accuser, especially when the *pro se* filed a motion to recuse.

motion to recuse.[87] ML had no authority to preemptively enjoin suit, advance his own agenda, and ignore § 1915 (d).[88] ML deprived Petitioner of the emergency TRO and fundamental relief under the law. No good faith reason, just concern, or "pressing need" required the pre-suit injunction and indefinite stay order.[89] The pretense of a referral was not for the purpose of conducting an evidentiary hearing, but to create the façade of legitimacy. Facts were dictated, not determined and the § 1915A subterfuge provided a vehicle to accomplish a fraud on the court.[90] The R&R is filled with attacks, not facts. No defendant or claim was addressed; the focus was solely on dehumanizing the target. ML's accusations are conclusionary and designed to drive the dismissal. He simply started with the desired end result in mind, pulled 28 U.S.C. § 1915A from the shelves, created the narrative, and invited

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[87] A judge cannot make a referral if it is "inconsistent with the Constitution and laws" and a magistrate cannot act without a referral of a pretrial motion. Since Petitioner never agreed to have a magistrate try any matter, the only proper referral was the *IFP*.

[88] Rule 3 (filing of a complaint commences an action); and Rule 4 (service of summons and complaint within 120 days). The complaint filed by Barnes complied with Rule 8 and the magistrate violated Rule 1 by enjoining the clerk from issuing and serving summons in the case. Rule 1 requires that the rules be "construed and administered to secure the just, speedy, and inexpensive determination of every action and proceeding." The intent behind the 1993 Amendments to Rule 1, adding the words "and administered" was to "recognize the affirmative duty of the court to ensure that civil litigation is resolved not only fairly, but also without undue cost or delay." NOTES OF ADVISORY COMMITTEE ON RULES—1993 AMENDMENT for Rule 1. The predominant value is "just." The courts have ignored "just" and hyper-focused on "speedy and inexpensive" for the defendants, not for those who have been injured and harmed.

[89] Blocking the action by *sua sponte* injunction for an indefinite period would violate 28 U.S.C. § 1915(b)(4) and (d). This was not an appropriate exercise of the Court's inherent power to control its docket. *See Lunde v. Helms,* 898 F.2d 1343, 1345 (8th Cir.1990).

[90] Fraud on the court "embrace[s] that species of fraud which does, or attempts to, defile the court itself, or is fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication". *Kenner v. C.I.R.*, 387 F.3d 689(1968). The function of legal process is to minimize the risk of erroneous decisions. *See Mathews v. Eldridge,* 424 U. S. 319, 424 U. S. 335 (1976); *Speiser v. Randall,* 357 U. S. 513, 357 U. S. 525-526 (1958).

the reader to speculate that one of the conditions of that statute would apply to justify a preemptive dismissal with prejudice. ML used cognitive priming to inflame the reader with groundless accusations to trigger the cognitive bias and confirmation bias. In the secrecy of a back office, ML was allowed to play accuser, prosecutor, grand jury, defense counsel, and judge unfettered by any traditional features of due process, open courts, or adversarial testing.[91] Conclusionary opinions based on nothing more than gossip, rumor, innuendo, speculation, conjecture, surmise, or some vague "best guess" or dishonest contrivance by an attorney are mere legal conclusions grounded in no evidence at all. Anyone can speculate that claims are frivolous before the testimony and evidence is presented to a jury.[92] Interloping attorneys not only invade the province of the jury, they usurp the jury's duty and alter fundamentally "who decides" questions of fact. "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge."[93] "It is only when witnesses are present and subject to cross-examination that their credibility and the weight to be given their testimony can be appraised."[94] A jury determines mental processes by relying on the cumulative weight of circumstantial

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[91] By taking on the role of defense counsel and accuser, ML was practicing law. Any federal magistrate "who engages in the practice of law is guilty of a high misdemeanor." 18 U.S.C. § 454 (1993). The FMA and § 1915 cannot be used to circumvent this principle.

[92] "Even the most dedicated trial judges are bound to overlook meritorious cases without the benefit of an adversary presentation. *Cf. Gardner v. California,* 393 U. S. 367, 393 U. S. 369-370 (1969). In fact, one of the consolidated cases here was initially dismissed by the same judge who later ruled for respondents, possibly because *Younger v. Gilmore* was not cited." *Bounds v. Smith*, 430 U.S. 817, 826 (1977).

[93] *Anderson v. Liberty Lobby*, 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d (1986).

[94] *Pollar v. Columbia Broadcasting Sys., Inc.*, 368 U.S. 464, 473, 82 S.Ct. 486, 491 (1962).

evidence since defendants rarely leave a well-marked trail. Motive, discrimination, conspiracy are quintessential jury functions. Disputes in these areas raise questions of fact, which cannot be deemed as a matter of law, but must be resolved by jury after trial. It is duplicitous for ML to claim to have read the pleadings and also opine that the claims are barred by immunity[95] or are "likely barred by the *Rooker-Feldman* doctrine."[96] ELY ignored the sworn, uncontroverted pleadings, accepted as fact the *ipse dixit* of ML, and entered a mechanical judgment adopting those "findings" without any supporting testimony or evidence. There can be no *de novo* review without an evidentiary hearing and determination of facts consistent with due process. "[W]hen a Government official's determination of a fact or circumstance...is dispositive of a court controversy, federal courts generally do not hold the determination unreviewable. Instead, federal judges traditionally proceed from the 'strong presumption that Congress intends judicial review."[97] Since dismissal was not in response to a Rule 12 or Rule 56 motion and no record is made, there is no reasonable means to test the

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[95] *See* ROA.68-90 paragraphs 21-48 WEAPONIZED IMMUNITY. *See also* ROA.90-127 paragraphs 49-95 Partnership in Official Lawlessness. *See also* ROA.127-177 paragraph 1 ADDITIONAL WEAPONS OF THE STATE. *See also* ROA.123-134 paragraphs 2-12 USE OF EPITHETS AND MEDIA PROPAGANDA. *See also* ROA.265-280 paragraphs 42-61 JURIDICAL RACKETEERING WITH WEAPONIZED IMMUNITY, AND CORRUPT ORGANIZATION OF BRM, MONOPOLY UNION, AND OPPRESSIVE ENFORCEMENT ARM. *See also* ROA.454-460 paragraphs 1-7 CONTINUING CONSPIRACY.

[96] *See* ROA.460-485 paragraph 1-25 DECLARATORY JUDGMENT AND PROSPECTIVE INJUNCTIVE RELIEF. *See also* ROA.386-437 paragraph 1-61 BREACH OF FIDUCIARY DUTY AND OATH OF OFFICE, BREACH OF SOCIAL COMPACT AND CONSTITUTIONAL CONTRACT, COMMON LAW FRAUD, AND FRAUD ON THE COURTS.

[97] *Bowen* v. *Michigan Academy of Family Physicians,* 476 U. S. 667, 670-673 (1986); *Abbott Laboratories* v. *Gardner,* 387 U. S. 136, 140 (1967)) (citing cases).

validity of the "factual determinations." There is no "clear and convincing evidence" of Congressional intent to nullify the right to petition and suspend due process by this anomaly of procedure.[98] "There is no evidence at all that members of Congress meant to preclude traditional avenues of judicial relief." *Abbott Laboratories*, 387 U.S. at 142. Chief Justice Marshall captured the essential idea:

> It would excite some surprise if, in a government of laws and of principle, furnished with a department whose appropriate duty it is to decide questions of right, not only between individuals, but between the government and individuals; a ministerial officer might, at his discretion, issue this powerful process . . . leaving to [the claimant] no remedy, no appeal to the laws of his country, if he should believe the claim to be unjust. But this anomaly does not exist; this imputation cannot be cast on the legislature of the United States. *United States* v. *Nourse,* 34 U.S. 8, 28-29, 9 Pet. 8 (1835).

"Determinations of the fact," mechanical judgments, and cursory "*de novo* reviews" cannot be "properly checked by this Court because the magistrate, who can scarcely be viewed as disinterested, has the first and final word."[99] In dealing with the *bête noire,* judges ignore the nullification of rights and adopt "findings" as if they were derived from an evidentiary hearing. In revoking the right to petition as if it were a license, ML and ELY impaired fundamental, structural rights and violated Petitioner's substantive state law rights protected by the Texas Constitution and the 9th and 10th Amendments.

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[98] *Rusk v. Cort*, 369 U.S. 367, 379-380 (1962).

[99] *Martinez v. Lamagno*, 515 U.S. 417, 426-27, 433-434, 436-37 (1995). There is no support in the legislative background for such a reading of the [IFP statute]. *Abbott Laboratories*, 387 U.S. at 145. There is "no persuasive reason for restricting access to the courts or judicial review is discernible from the statutory fog we confront here." *Martinez v. Lamagno*, 515 U.S. 417, 424-25 (1995).

No rule requires Petitioner to marshal evidence within short and concise pleadings. Petitioner was entitled to a presumption that the sworn facts stated in the complaint were true. There was no rebuttal; so, those facts remain unopposed, uncontroverted, and undisputed.[100] Petitioner presented a *prima facie* case on plausible claims[101] and was entitled to a jury trial on the 11 legitimate claims or at least an evidentiary hearing on disputed factual issues. A neutral and detached magistrate allows discovery and conducts evidentiary hearings with sworn testimony.[102] Courts must not obstruct justice or frustrate the purpose of discovery and adversarial testing vital to the protection of fairness. Without an evidentiary hearing, ML and ELY cannot honestly, ethically, and legitimately conclude with certainty that Petitioner is unable to make any rational argument to support the claims.[103]

13. This systemic abuse of §1915A is a *de facto* repeal of the IFP statute, 18 U.S.C. § 1963, *et seq.* (RICO), the Civil Rights Act of 1866 codified and

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[100] *St. Mary's Honor Ctr.*, 509 U.S. at 506, 113 S.Ct. 2742; *Scaria v. Rubin*, 117 F.3d 652, 654 (2d Cir. 1997) (per curiam); *Chambers v. TRM Copy Ctrs. Corp.*, 43 F.3d 29, 37 (2d Cir. 1984).

[101] *Bohannan v. Doe*, 527 F. App'x 283 (5th Cir. 2013); *Lewis v. Casey*, 518 U.S. 343, 356 (1996); *See Ulmer v. Chancellor*, 691 F.2d 209, 213 (5th Cir. 1982). The court must liberally construe a *pro se* civil rights complaint. *See Moore v. McDonald*, 30 F.3d 616, 620 (5th Cir. 1994).

[102] "Every person is entitled to an opportunity to be heard in a court of law upon every question involving his rights or interests, before he is affected by any judicial decision on the question." "A judgment may not be rendered in violation of constitutional protections." *Earle v. McVeigh*, 91 US 503, 23 L Ed 398 (1875).

[103] *See, e.g.*, CHARLES ALAN WRIGHT & MARY KAY KANE, LAW OF FEDERAL COURTS § 68 (6th ed. 2002). As Professor Charles Wright observes, whether a plaintiff is *pro se* or represented by counsel, a complaint cannot be dismissed unless it appears to a certainty that no relief can be granted under any set of facts that can be proved in support of its allegations. This rule precludes final dismissal for insufficiency of the complaint except in the extraordinary case in which the pleader makes allegations that show on the face of the complaint some insuperable bar to relief. *Id.* at 474 (footnote omitted).

expanded in 42 U.S.C. § 1981, *et seq.*, and a nullification of international human rights, civil liberties, and common law freedoms for a marginalized group. The Act is unconstitutionally vague, oppressive, and discriminatory in every application. Cognitive priming, bias, and confirmation create the presumption that all facts, claims, causes of action, and appeals filed by *IFP* are "frivolous." Cognitive dissonance continues this practice despite its assault on the Constitution and its intended beneficiaries. Juridical subterfuge exempts federal employees and all attorneys from suit; and punishes the exercise of First Amendment rights without notice, opportunity to defend, or a jury trial in a retroactive, *ex post facto*, bill of pains and penalties fashion; and conceals the violation of the separation of powers by cloaking discrimination in discretionary privilege and circumvents constitutional objections by claiming challenges were made "for the first time on appeal."[104] Essentially, the adopted artifice permits attorneys to act in their own self-interests to suspend the bill of rights and repeal disfavored laws by nullifying *erga omnes* obligations secured by the Constitution. Therefore, § 1915A is unconstitutional on its face and as applied under § 1915, and must be struck down. Congress must enact a statute separate from the *IFP* that is not a bill of attainder, and must set out specific factual

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[104] The Panel refused to address critical constitutional challenges by claiming, in a dismissive footnote 5 on page 4, that these arguments were made "for the first time on appeal." However, the challenges were raised, argued, and fully briefed in the trial court. *See* Original complaint, (ROA.22-27; ROA.46-177, ROA.411-437, ROA.452-454, ROA.471-483), Rights Violated (ROA.504-553); Objections to the R&R, (ROA.799-911); and the Notices of Appeal (ROA.919-972, ROA.975-996).

findings that are required to be supported with evidence in a jury trial and with due process before the cruel and unusual punishment of outlawry and a permanent lifetime ban of disfranchisement is imposed.

> The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 638 (1943).

Whether juridical bills of pains and penalties imposed in an* ex post facto *manner without due process may be utilized under our Constitution to retaliate against and punish a person who has done nothing more than exercise a fundamental right?

1. The vexatious ban is a juridical bill of pains and penalties, applied *ex post facto*, and like § 1915A, imposes punishment without due process or jury trial in violation of U.S. Const. Art. I, § 9, cl. 3, cl. 4, cl. 8, and § 10; U.S. Const. Amend. I, IV, V, VII, VIII; Tex. Const. Art. I, §§ 3, 3a, 9, 10, 13, 15, 16, 19, 20, 27, 28, and 29 protected by U.S. Const. Amends. IX and X[105] and the RFRA.[106] The § 1915A disposal and retaliatory punishment is achieved by

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[105] U.S. Const. Art. I, § 9, cl. 3. The interpretation and application of 28 U.S.C. § 1915 (e) (2) (B) is a bill of attainder and the oppressive infliction of punishment as a "vexatious" litigant is a juridical bill of attainder, which also violates the 1st, 4th, 5th, 8th, 9th, and 10th Amendments. U.S. CONST. Art. 1, § 10; TEX. CONST. Art. I, §§ 16, 29. Also, "[n]o conviction shall work...forfeiture of estate." TEX. CONST. Art. I, § 21. "Attainders, outlawry, deprivation of property except by due process of law, and the...forfeiture of estate, as a result of conviction of crime, are expressly prohibited by the organic law." *Davis v. Laning*, 19 S.W. 846, 846 (Tex. 1892).

[106] Religious Freedom Restoration Act, 42 U.S.C. §§ 2000bb *et seq* and Chapter 110 TEX. CIV. PRAC. & REM. CODE. In *Sacred Pathways*, Gary Thomas sets out nine ways to worship God. One of those nine recognized ways is as an Activist. "Activists love God through confronting evil, battling injustice, and working to make the world a better place." Gary Thomas, *Sacred Pathways* (Grand Rapids: Zondervan 2000). *See also* Rick Warren, *The Purpose Driven Life* (Grand Rapids: Zondervan 2002). Barnes has been repeatedly

means that sweep unnecessarily broadly and invade an area of protected freedoms. Petitioner challenges the constitutionality of these *suo motu* juridical bills of pains and penalties.[107]

2. The scope of the Bill of Attainder Clause must be assessed in light of the evils it was designed to prevent—namely, "punishment, of any form or severity, of specifically designated persons or groups."[108] Historically, "the Bill of Attainder Clause prohibited any 'law that legislatively determines guilt and inflicts punishment upon an identifiable individual without provision of the protections of a judicial trial.'"[109] In *Brown*, the court held that statutes, which do "not set forth a generally applicable rule... and leave to the courts and juries the job of deciding what persons have committed the specified acts or possess the specified characteristics" were bills of

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marginalized, harassed, and retaliated against for her religious beliefs. Barnes had a fundamental right to earn a livelihood consistent with her deeply held religious beliefs. This is a protected zone of activity. *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 240 (2002). The Court held that: "First Amendment freedoms are most in danger when the government seeks to control thought or to justify its laws for that impermissible end. The right to think is the beginning of freedom, and speech must be protected from the government because speech is the beginning of thought." *Id.* at 253. The right to petition involves the right to think, speak, and practice religious beliefs. In *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508 (1972),. Harsh retaliation chills and eliminates fundamental rights. Barnes and her children are punished for her religious and socio-political beliefs; and ELY has steadfastly protected this abuse and retaliation. *See Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934); *Powell v. Alabama*, 287 U.S. 45, 67 (1932); *Poe v. Ullman*, 367 U.S. 497, 517 (1961) (dissenting op. Douglas, J.); *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (dissenting op. Brandeis, J.); *Katz v. United States*, 389 U.S. 347 (1967).

[107] THE FEDERALIST NO. 44, at 278-79 (James Madison) (Clinton Rossiter ed., 2003).

[108] *See United States v. Brown*, 381 U.S. 437, 442 (1965); *see also* Paul R. Verkuil, *Separation of Powers, the Rule of Law and the Idea of Independence*, 30 WM. & MARY L. REV. 301, 447 (1989) (explaining that the prohibition against legislative punishment...insure[s] that no one is denied a fair trial" by "prevent[ing] the legislature from serving in two capacities—law creator and law enforcer"). The attainder is used to dispense with the jury trial and due process and skip directly to the harshest punishment a court can impose.

[109] *ACORN v. United States*, 618 F.3d 125, 135-36 (2d Cir. 2010) (quoting *Selective Serv. Sys. v. Minn. Pub. Interest Research Grp.*, 468 U.S. 841, 846–47 (1984)).

attainder.[110] If the statute is interpreted and applied to "require" preemptive review of all complaints filed by paupers, prisoners, and "*pro se*," then, this group has been presumed guilty and singled out for *sua sponte* summary disposal by a politicized gatekeeper and subject to the "vexatious" banishment of outlawry.[111] The *Brown* court made it clear that Congress "cannot specify the people upon whom the sanction it prescribes is to be levied,"[112] even if there are good policy reasons for the legislation in question. Congress simply cannot create a class or group of suspects for the purpose of imposing heightened scrutiny, preemptive exclusion, and punishment.[113] "[T]he fact that a given law or procedure is efficient, convenient, and useful in facilitating functions of the government, standing alone, will not save it if it is contrary to the Constitution."[114]

3. With punitive statutes, Congress must "establish minimal guidelines" to govern the courts.[115] With no definitions or standards set by Congress to

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[110] *United States v. Brown*, 381 U.S. 437, 450 (1965).

[111] The courts have shown no overriding justification for the imposition of case-determinative penalties and bans on court entrance imposed without due process or any process. A preemptive strike by a gatekeeper would have been unfathomable to the Revolutionary Congress and is antithetical to this constitutional republic.

[112] *Id.* at 461. Vexatious corporations, PACs, and abusers who pay to play, like Donald J. Trump, are exempt. Thus, the ban is not directed toward vexatious or frivolous conduct.

[113] *Consol. Edison Co. of N.Y. v. Pataki*, 292 F. 3d 338, 350 (2d. Cir. 2002).

[114] Paul R. Verkuil, *Separation of Powers, the Rule of Law and the Idea of Independence*, 30 WM. & MARY L. REV. 301, 304 (1989).

[115] *Kolender v. Lawson, 461 U.S. 352, 358 (1983).* Laws regulating persons must give fair notice of what conduct is required or proscribed, see, *e.g., Connally* v. *General Constr. Co.*, 269 U. S. 385, 391 (1926), is essential to the protections provided by the Fifth Amendment's Due Process Clause, see *United States* v. *Williams*, 553 U. S. 285, 304 (2008), which requires the invalidation of impermissibly vague laws. Punishment fails to comply with due process if the statute or regulation under which it is obtained "fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." *Ibid.* The void for vagueness doctrine addresses at least two connected but discrete due process concerns: Regulated parties should

inform the public with specificity the conduct proscribed or prohibited, attorneys usurp the duties of the legislative and executive branches. Even through Article III delegated no authority to courts to nullify rights, vague and indeterminate terms like "frivolous," "malicious," and "vexatious" are employed in an overly broad fashion with maximum punitive effect.[116] Inferior courts have no discretion to dispense with protections, suspend the law, or abuse the *IFP* statute as a pretense to impose excessive, disproportionate, cruel and unusual punishment without an opportunity to be heard, in a fair and impartial hearing, with due process, strict evidentiary proof, and jury trial.[117]

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know what is required of them so they may act accordingly; and precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way. When speech is involved, rigorous adherence to those requirements is necessary to ensure that ambiguity does not chill protected speech. The practice or policy of punishment through a *sua sponte* springing trap does not suffice for the fair notice required when the Government intends to impose a penalty of disfranchisement or outlawry as punishment for allegedly impermissible speech or defective petitioning. In exercising a fundamental right, all those who are labeled prisoner, pauper, "pro se," or *IFP* are at the mercy of *noblesse oblige* in violation of the due course of law and due process.

[116] "Vague laws offend several important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warnings. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory applications." *Grayned v. City of Rockford,* 408 U.S. 104, 108–09 (1972), *quoted in Village of Hoffman Estates v. The Flipside,* 455 U.S. 489, 498 (1982). A statute prohibiting conduct that is not sufficiently defined is void for vagueness. *See Grayned v. City of Rockford,* 408 U.S. 104, 108, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972); *Comm'n for Lawyer Discipline v. Benton,* 980 S.W.2d 425, 437 (Tex.1998).

[117] Due process forbids condemnation without a hearing, *Pettit v. Penn.,* La.App., 180 So.2d 66, 69." Black's Law Dictionary, 6th Edition, page 500. "Due Process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgement upon the question of life, liberty, or property, in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of right in the matter involved. If any question of fact or liability be conclusively presumed against him, this is not due process of law." Black's Law

4. ML was cast in the role of accuser and censor. The punishment was based solely on the mere *ipse dixit* of one attorney-accuser-adversary-arbiter bolstered only by speculation and innuendo. Derogatory stereotypes were used to justify the preemptive suppression of rights and punishment for the attempted exercise of those rights and Barnes had a *bona fide* intention to exercise a constitutional right. Barnes engaged in no conduct that justifies the preemptive punishment. There is *no* evidence to support the presumption that the interest advanced by Barnes' exercise of her fundamental rights was insignificant in comparison to some imagined or judicially-created inconvenience, annoyance, or alarm.[118] With no testimony or evidence to review, the Article III judges pretend the accusations by the magistrate are actual facts, conclusions are true, punishment is justified, and branding of outlawry is deserved.

5. The ban on unfettered access to the courts is permanent and irreversible.[119] Barnes had property interests stolen, contracts impaired, and her right to petition was revoked and terminated without due process. This

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Dictionary, 6th Edition, page 500. When a court has transcended its jurisdiction, there has been a departure from established modes of procedure that will render the judgment void. Courts are not authorized to exert their power in that way. The power underlying judicial authority must be based on a litigant's fair opportunity to be heard. For jurisdiction is the right to hear and determine, not to determine without hearing. And where no appearance was allowed, there could be no hearing or opportunity of being heard, and no exercise of jurisdiction. By judicial act, Barnes was excluded from its jurisdiction and robbed of rights, remedies, and recourse.

[118] *North Carolina v. Pearce,* 395 U. S. 711 (1969); *Colten v. Kentucky*, 407 U.S. 104 (1972).

[119] *See United States v. Lovett*, 325 U.S. 303, 316 (1946); *ACORN v. United States*, 692 F. Supp. 2d 260, 270 (E.D.N.Y. 2010). *See Pierce v. Carskadon*, 83 U.S. (16 Wall.) 234 (1873); *Ex Parte Garland*, 71 U.S. (4 Wall.) 333 (1867); *Cummings v. Missouri*, 71 U.S. (4 Wall.) 277 (1867); *Brown*, 381 U.S. 437; Comment, *The Supreme Court's Bill of Attainder Doctrine: A Need for Clarification*, 54 CALIF. L. REV. 212, 218-32 (1966).

retaliation is clearly erroneous because it ignores the lack of proof or admissible evidence from the accuser and robs the accused of all constitutional protections. There is an appalling absence of a single example of "frivolous" claims, or any evidence to show how these claims were "without merit," or any specific, identifiable conduct by Barnes that justifies the retaliatory penalty of "dismissal with prejudice" and the "vexatious" labeling, disfranchising stigma, and permanent banishment.[120] Aside from the current case filed in 2018, there is *only one prior* case, filed in 2012, where Petitioner sought to proceed *IFP*. Petitioner's status as a "pauper" and "*pro se*" was the direct and proximate result of the criminal conspiracy. In both cases, rights protected by the First Amendment were obliterated in the same brutal summary fashion under an abusive application of § 1915A even though Petitioner was not a "prisoner." The prior preemptive dismissal in 2013 was used as "evidence" of a "pattern of filing frivolous lawsuits in this Court" to justify a lifetime ban of disfranchisement—even though there was no finding that the claims were "frivolous" at the time. Punishment is imposed with "alternative facts" and by recasting history in an *ex post facto* manner. The bill of pains and penalties only formalizes the *de facto* infringement of rights, it does not legitimize it.[121]

6. Attaint by fraud, outlawry by edict, and tyranny by stamping the

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[120] *Cf. North Carolina v. Pearce,* 395 U. S. 711, 726 (1969).

[121] Senator Dick Durbin stated "We believed that first you have the trial, then you have the hanging. But, unfortunately, when it comes to this [person or group], there has been a summary execution order issued before the trial." *ACORN v. United States*, 692 F. Supp. 2d 260, 274 n. 14 (E.D.N.Y. 2010) (quoting 155 CONG. REC. S10,221 (daily ed. Oct. 7, 2009).

label—"BARRED FILER"—on a resident of Texas is unconstitutional *per se.*[122] Punishment with permanent disfranchisement and the stigma of outlawry for doing nothing more than using the courts in the exact manner for which they were designed and intended to be used is cruel and unusual. There is no avenue for relief or procedure to lift this permanent infringement of rights, or remove this indelible ink of "vexatious," or alleviate this oppressive lifetime ban. It is disingenuous to claim that a "vexatious" litigant can still petition *if* permitted by the court because the court *never* allowed "*pro se*" paupers and prisoners to petition *before* the punitive epithet was affixed and the ban imposed, so, there is no possibility that the results would be any different *after* this disfranchising process is applied and punishment inflicted. Indeed, it is certain that the discriminatory scrutiny and impossible hurdles will be much higher and the barrier to the courts will be much more fortified and protected after the "vexatious" label attaches.[123] The burden will be heavier because the "BARRED FILER" alert is boldly stamped on the carcass of the civilly dead and prominently posted in public records to invite attacks by circling vultures, and to preemptively prejudice and predictably deliver the desired result.

CONCLUSION

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[122] Tex. Const. Art. I, § 20 specifically protects against outlawry and being placed outside the protection of the law. The harsh severity of outlawry, which attorneys inflict without due process or jury trial, is referred to as civil death. Outlawry, or being placed outside the protection of the law, is a permanent suppression of human rights because attorneys traffic in the tyranny of labels.

[123] *See* Barkett, J., "The Tyranny of Labels" 33 *Suffolk Univ. L. Rev.* 749 (2005).

There is a consolidation of political power when § 1915A is grafted into § 1915 because Congress made a judgment and presumed guilt against prisoners based on skewed data from the courts. As a result of the PLRA, § 1915 was left in such a bastardized, confusing mess that allows discriminatory impact. The courts now apply the "screening process" to repeal the *IFP* statute. There is no separation of powers when attorneys in all three branches are united and collude to violate the Bill of Rights and target, marginalize, exclude, and punish paupers, "*pro se*," and prisoners. Attorneys ration, restrict, reduce, and revoke the people's human rights as if they were mere licenses, and retaliate against those who are not escorted by an attorney when they access their own courts. By subjecting people to oppressive "review" and imposing the impossible burden of meeting vague, imprecise, and unarticulated demands, these attorneys summarily punish and ban *bête noire* by negating their right to petition for life. Partnership attorneys blame and scapegoat marginalized people by presuming they are filing frivolous and malicious claims. Partnership attorneys are official censors and oppressors who preemptively exclude, maliciously malign, and summarily punish the unescorted people as part of a political "tort reform" movement deceptively packaged as "efficiency" so that prejudice and bullying is transformed into "maintaining the integrity of the courts." The Courts are not free to punish people for exercising a right. Permanent impairment of a structural right is unconstitutional *per se*.

APPENDICES

INDEX TO APPENDICES

Appendix A A-1 Judgment and Order; A-2 Fifth Circuit *per curiam* panel opinion; and A-3 Order on Motion for Rehearing of the Court of Appeals for the Fifth Circuit.

Appendix B Bill of Rights U.S. Const. Amends. 1, 4, 5, 7, 8, 9, and 10; 28 U.S.C. § 1915 and 28 U.S.C. § 1915A; 28 U.S.C. § 631, *et seq.*; Fed. R. Proc. Rule 1, 3, 4, 8; and the Standing Order of the District Courts.

Appendix C Texas Bill of Rights Tex. Const. Art. I, §§ 1, 2, 3, 3a, 9, 10, 13, 16, 19, 20, 26, 28, and 29; and Art. II, § 1. These "forever inviolate" rights are preserved and protected by the 9th and 10th Amendments to the United States Constitution.

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/s/ Carolyn Barnes

Carolyn Barnes